

REMARKS

Reconsideration of the application as amended is respectfully requested.

The claims have now been amended to include the feature that the claimed product contains a ***non-rigid cellular expanded net base material***, into which the aggregate and tar are filled.

In Section 3 of the Office Action, claims 1-12 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Stock in view of Kinney. This rejection is respectfully traversed. There is a significant difference between the product defined in all of Applicant's claims and the products disclosed in Stock and/or Kinney.

The Stock patent, for example, is directed clearly and unequivocally to a base material that is ***rigid*** or ***stiff***. The entire essence of the Stock patent requires that the base material be rigid and that it must retain its rigid shape after expansion. Stock states that, if sheet metal is used, then his expanded product inherently has the necessary stiffness to retain its shape and to be operative in the practice of his invention. He further states that, if plastic, paper or cardboard is used, then the expanded form must be sprayed or impregnated with a stiffening agent in order to acquire the stiffness needed to retain its shape. See Stock, column 2, lines 24-40. As pointed out above, ***stiffness*** is the very essence of the Stock invention.

In direct contrast to this, all of Applicant's claims call for the base material to be ***non-rigid***. No distinction could be more clear-cut than this.

The distinction is significant because it forms the basis for the patentability of Applicant's invention. Applicant's discovery was that it is not necessary for the base material to be stiff or rigid in order to form the core into which the aggregate and tar are poured. This discovery is not disclosed or suggested in the Stock patent. Stock's disclosure in fact points in the opposite direction -- namely, that the base material ***must be rigid***.

Moreover, the distinction is significant in light of the fact that it would be impossible to achieve the intended use of Applicant's product if the base material were stiff or rigid. Applicant's intended use contemplates rolling the slitted base material into

compact rolls and transporting to the site of usage. Stock's base materials are required to be **stiff** or **rigid** and therefore could not possibly be formed into rolls. There is nothing in the Stock disclosure that suggests or contemplates the formation of rolls.

Similarly, the Kinney patent is completely lacking in any disclosure of the use of a **non-rigid** base material. Kinney's product is **metal fencing**. (See the Title and the first paragraph of the patent.) Kinney produces slits in flat metal plates and then expands them into self-supporting fence panels. His objective is to produce "a very stiff structure." (See column 2, line 53.) Stated in other words, he intends to make a frame-work "having great stiffness and strength." (See column 3, lines 3 and 30-31.) There certainly is no disclosure or suggestion to use a flexible or non-rigid base material. The teaching is directly to the opposite.

Since neither Stock nor Kinney discloses the Applicant's claimed element of a **non-rigid base material**, and since this is a significant distinction, it is clear that the combination of references must fail and that the rejection of claims 1-12 should be withdrawn for this reason alone.

In addition to this significant distinction, it is pointed out that the claims contain other elements which add further differentiation over the cited references. These additional distinctions (e.g., the requirement for an expanded net material, the direction of the slits, and the transporting of rolls of slitted material to the site of usage) have been explained in previous responses. Although the Examiner has discounted the significance of these distinctions, it should be pointed out that the Examiner's position is for the most part based on conclusory, but unsupported, observations that Applicant's claimed elements of distinction "would have been obvious." In any event, even without these additional distinctions, the distinction based on Applicant's use of a **non-rigid base material** is sufficient in itself to warrant withdrawal of the Stock and Kinney references.

Favorable action on this application is solicited.



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Respectfully submitted,

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